UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Fifteenth Region

AECOM GOVERNMENT SERVICES, INC.

Employer

and Case 15-RC-8782

INDUSTRIAL, TECHNICAL & PROFESSIONAL

EMPLOYEES UNION, OPEIU LOCAL 4873, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), a hearing was held before a Hearing Officer of the National Labor Relations Board (Board) on February 25, 2009. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

The Petitioner seeks a Board-directed election pursuant to the RC petition it filed on February 12, 2009. The Employer contends the petition should be dismissed because its operations at Fort Polk will cease on May 31, 2009, and thus the bargaining unit will no longer exist after that date. At the hearing, both parties stipulated that if an election is ordered, the proposed unit would include all nonsupervisory employees employed in the Employer's public works department at Fort Polk, Louisiana, including leads, but excluding all employees in the administrative assistant and secretary III classifications, all confidential employees, professional employees, guards, managers, and supervisors as defined in the Act. The proposed bargaining unit would include approximately 150 public works employees. The parties have no bargaining history, and they stipulated that there is no contract bar to this proceeding.

In the decision below, I will first describe the Employer's operation. Next, I will describe the Employer's contract with the federal government to provide services at Fort Polk. Then I will describe the potential for the Employer to continue operations after May 31, 2009. Finally, I will set forth my conclusion and the basis for my conclusion that the election should be directed.

FACTS

Operation:

The Employer is a corporation that provides base support for Fort Polk, a military post in Louisiana that is home to around 9,000 active-duty soldiers. When the Employer first began its operations at Fort Polk in 2003, it had five departments, which included public works. The public works department maintains all buildings, roads, and utility lines at Fort Polk.

Contract with the Government:

In December 2002, the Employer was awarded a government contract to provide whole base support services for Fort Polk. The Employer had an approximate six-month "phase-in" period from January 2003 until June 14, 2003, during which the Employer interviewed and hired employees as well as trained and certified certain workers. After the phase-in period, the Employer "went live" with its operations. While the contract between the Employer and the government was not introduced at the hearing, Robert L. Shirron, the Employer's project manager, testified that the initial contract was for a period of one-year and gave the government the option to unilaterally renew the contract for up to four additional years. (Tr. 17) Shirron further stated that the contract gave the government the right to unilaterally extend the contract for up to six months following the termination of the fifth year of the contract and that any further extensions of the contract would have to be bilateral. (Tr. 21, 25)

The government exercised its right to extend the contract for each of the four option years—2005, 2006, 2007, and 2008. Finally, in 2008, the government exercised its last option to unilaterally extend the contract for six months to December 14, 2008. Shirron testified that prior to December 14, 2008, the parties reached a bilateral agreement that the Employer would perform its public works services at Fort Polk until May 31, 2009. (Tr. 25)

At the hearing, the Employer provided hearsay testimony that it had not agreed to, nor been offered, any additional contract extensions beyond May 31, 2009, regarding its public works operations at Fort Polk. Shirron testified that the government would only accept bids for the successor public works contract from companies hiring severely handicapped personnel. (Tr. 29-30) Shirron further testified that the government notified him through phone conversations and emails that Pride Industries had been selected to perform the public works operations at Fort Polk after May 31, 2009. (Tr. 30-31) In addition, Shirron testified that the Employer was leaving many vacancies in its public works department unfilled and was sharing proprietary information with Pride Industries. (Tr. 31, 33-34)

The Employer also provided the testimony of Russell Lawrence Guillot, a supervisory contract specialist for the Army. (Tr. 53) Guillot testified that he is the contracting officer who handles the Employer's contract with the government but that he has no role in the government's procurement of the successor contract for public works operations at Fort Polk. (Tr. 53, 59) Guillot stated that Brenda Johnson, from the Fort Sam Houston Contracting Center, is responsible for the procurement of the successor contract relating to the instant case. (Tr. 56-57) Guillot testified that he was told by the Fort Sam Houston Contracting Center that no extensions to the Employer's contract would be approved. (Tr. 57) Guillot also testified that Pride Industries has been selected as the company to take over the public works operations at Fort Polk after the Employer's contract ends on May 31, 2009. (Tr. 54) However, Guillot did not state how he knows that Pride Industries has been selected. Further, he testified that though Pride Industries has been selected to be the performing contractor of the public works operations, it has not been awarded the contract. (Tr. 60) According to Guillot, after Pride Industries submitted its proposal for the contract (which was due on February 25, 2009, the date of the hearing), the government would then evaluate the proposal and the two parties would enter into negotiations. (Tr. 60) Guillot

testified that he did not know how long the evaluation or negotiation process would take and that he did not know whether the government had a contingency plan for who would handle the public works operations in the event that the contract was not awarded to Pride Industries by May 31, 2009. (Tr. 61-62)

ANALYSIS

Based on the foregoing and the record as a whole, I conclude that the Employer's assertion that it will cease operations on May 31, 2009, is too speculative to bar an election. The record does not include any documentation of the Employer's alleged upcoming cessation of operations at Fort Polk. Rather, the record contains hearsay evidence and mere assertions from the Employer that it will not provide any public works services at Fort Polk after May 31, 2009. As such, the Employer has not met its burden of proving that its alleged termination of operations is more than conjectural and that the petition should thus be dismissed.[1]

First, while the Employer contends the government will not extend its contract beyond May 31, 2009, the Employer failed to produce any document attesting to this assertion. In fact, while Shirron testified that he had been told that Pride Industries would assume the successor contract through "various phone conversations with the Army director of contracting personnel on Fort Polk, as well as several emails," the Employer did not introduce any of these emails as evidence. (Tr. 30-31) Shirron's testimony, therefore, was hearsay. "Administrative agencies ordinarily do not invoke a technical rule of exclusion but admit hearsay evidence and give it such weight as its inherent quality justifies." *Alvin J. Bart and Co., Inc.*, 236 NLRB 242 (1978). In the instant case, I find Shirron's oral testimony to be self-serving and afford it little weight because no direct evidence was presented, such as testimony from the Army director of contracting personnel or the aforementioned emails.

[1] Because I have found that the Employer's alleged cessation of operations is merely speculative, it is not necessary to discuss whether the bargaining unit will continue to exist if the Employer actually stops performing public works functions at Fort Polk.

Moreover, the Employer, despite testifying that there were emails that confirmed its position, did not produce any document to support its contention that the government had decided to procure a successor contract for the public works operations at Fort Polk from a company that hires severely handicapped individuals. The Employer, instead, only provided oral testimony from its project manager and from an Army contracting officer not directly involved with the successor contract. I give this testimony little weight as the Board accords evidence the weight to which it is entitled based upon its reliability. *See Siemens Building Technologies, Inc.*, 345 NLRB 1108 (2005). Shirron's oral testimony was self-serving and Guillot's statements have little probative value as Guillot is not responsible for the procurement of the successor contract at issue in the instant case.

The Employer also contends that it has not been filling some of the vacancies in its public works department in order to show that it does not expect to continue operations at Fort Polk. However, the Employer submitted no payroll records or other such hard evidence to demonstrate that it is leaving many open positions unfilled. In *Teamsters Local Union No. 667*, the Board gave no weight to the oral testimony of a seemingly "honest witness" regarding the text on a sign because the production of the sign at the hearing would have been "the best evidence of its contents." 248 NLRB 260, 266 (1980). Similarly, I accord little weight to Shirron's oral testimony stating that the Employer has not filled some vacant positions in its public works department.

Additionally, in an effort to show that the Employer has no expectation of continuing its operations at Fort Polk, Shirron testified that the Employer has shared proprietary information with Pride Industries, such as a list of vendors and workload data. However, the Employer did not provide any documentation to demonstrate this sharing of information. Therefore, I afford Shirron's testimony little weight as it is not the best evidence. *See Id.*

Moreover, Shirron testified that if the government asks the Employer to continue its operations after May 31, 2009, as it so offered on December 14, 2008, then he would recommend to the Employer's president that the Employer accept the contract extension. While he testified that he did not know

whether the president would accept this recommendation, his statement was evidence that the Employer would consider a second bilateral extension of the contract. This is similar to *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976), where the Board upheld the Regional Director's decision to direct an election. In making its ruling, the Board considered the fact that the employer's attorney stated the employer had applied for a 12-year tax exemption though it asserted its operations would cease in 6 months because "[the employer] would like to continue and because [the employer is] doing everything [it] can to make it possible." Additionally, in *S.K. Whitty and Company, Inc.*, 304 NLRB 776 (1991), the employer's general manager stated that the employer wished to maintain its business in its present locale but that a lack of business opportunities could cause the employer to withdraw from the area. The Board took note of the employer's desire to remain in the area in its decision that the election should be directed.

Furthermore, Guillot stated that he is unaware of any contingency plan that the government will enact if Pride Industries does not reach a contract with the government by May 31, 2009. While Pride Industries has allegedly[2] been selected to take over the successor contract, the government has not yet awarded the contract to any company.

At the hearing, the Union and the Employer both stated that Pride Industries had until February 25, 2009, the day of the hearing in the instant matter, to submit its proposal to the government.[3] Shirron and Guillot both testified that once the government receives Pride Industries' project proposal, the two parties will bargain and try to negotiate a contract. There is a possibility that Pride Industries will not reach a contract with the government by May 31, 2009. Given the government's history of extending its contract with the Employer at Fort Polk, it is feasible that the government will attempt such a contract extension with the Employer again. In fact, when the Employer was first awarded its contract at Fort Polk, it utilized a six-month phase-in time to hire workers and certify them for certain tasks. If the successor contract is awarded to a company other than the Employer, it is quite possible that the successor

[2] No documentary evidence was presented during the hearing to prove that Pride Industries has been selected to take over the successor contract.
[3] There was no effort on the part of the Employer to hold the record open so that it could submit a copy of the proposal to the Hearing Officer.

company will need a similar phase-in time period. In *Dupont*, 117 NLRB 1048 (1957), the Employer was a government contractor, and the Board directed an election where the government had ordered that the Employer cease all operations in around six month's time. The Board noted that the government's order "may be revoked before final shutdown" and thus the Act would "best be effectuated by the direction of an immediate election." *Id.* at 1053.

In the instant case, the Employer failed to provide more than a bare unsupported assertion that its operations at Fort Polk would cease on May 31, 2009. While the Employer contends that the Union has not presented any evidence that the Employer will not cease its operations on May 31, 2009, the Union need not prove this notion. On the contrary, before any burden of proof shifts to the Union, the burden is upon the Employer to show that it will cease its public works operations at Fort Polk on May 31, 2009. In the instant case, the Employer has not met this burden by making mere speculative assertions.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.[4]

3. The Petitioner claims to represent certain employees of the Employer.

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[4] The Employer, AECOM Government Services, Inc., is a corporation engaged in the business of providing support services under government contract at Fort Polk, Louisiana. During the past 12 months, a representative period, the Employer, in the course and conduct of its operations, purchased and received goods and materials valued in excess of $50,000 directly from points located outside of the United States.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All nonsupervisory employees employed in the employer's public works department at Fort Polk, Louisiana, including leads, but excluding all employees in the administrative assistant and secretary III classifications, all confidential employees, professional employees, guards, managers, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **INDUSTRIAL, TECHNICAL & PROFESSIONAL EMPLOYEES UNION, OPEIU LOCAL 4873, AFL-CIO, or no union.** The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

Eligible Voters

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike

began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all Parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the ***full*** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 15, 600 South Maestri Street, 7th Floor, New Orleans, LA 70130-3413, **on or before March 25, 2009.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (504) 589-4069, or by e-mail to the Regional Office at NLRBRegion15@nlrb.gov. See OM 05-30 and OM 07-07, which are available on the Agency's website at www.nlrb.gov, for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website. Since the list will be made available to all parties to the election, please furnish a total of two (2) copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for at least three 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Service*s, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. A request for review may also be submitted by electronic filing. See attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website at www.nlrb.gov, for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website. This request must be received by the **Board in Washington by 5:00 p.m. EDT on April 1, 2009.** The request may ***not*** be filed by facsimile.

Dated at New Orleans, Louisiana this 18th day of March, 2009.

/s/ M. Kathleen McKinney
M. Kathleen McKinney, Regional Director
National Labor Relations Board, Region 15
600 South Maestri Place, 7th Floor
New Orleans, LA 70130-3413